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COMMUNICATIONS.

A COMMENT ON DR. BANNISTER'S VIEW OF THE PRENDERGAST CASE.

The most striking feature of Dr. Bannister's article on the Prendergast Case, published in the last number of *THE AMERICAN LAW REGISTER AND REVIEW*, is its utter failure to touch the vital point in the case. That point, as in every case in which insanity is set up as a defence, was not whether the criminal was insane, but whether he was responsible. A man can be insane and responsible at the same time. The two conditions are not interdependent. It would not necessarily follow, then, that Prendergast was wrongfully punished, even if we admit the jury to have made a mistake in their finding as to his sanity. But Dr. Bannister should also bear in mind that the opinions of experts are by no means conclusive of facts—no opinion can be; and even if the learned doctors who gravely pronounced their dicta on the hypothetical question put, were the polestars of their profession, it does not necessarily follow that the jury who saw and listened to the criminal were not, by very reason of their lack of special training, better fitted to decide impartially. Overfine training in any special department is apt to lead to results that themselves partake of the character of a mild mania. A highbred pointer kept in the city, away from all opportunities to exercise his special powers, has been known, when taken out for a walk, to point a fan or a piece of paper; and the same tendency is unfortunately too apparent in some modern experts.

Before the punishment of Prendergast can be justly impugned, then, these facts must be established. 1. That he was insane, not merely supposed to be, on the strength of hereditary influence, physical condition and erratic action, by men whose business it is to ferret out such facts. 2. That, supposing him to have been insane, that insanity was of a nature to negative his responsibility. On this last question the law and the doctors are, and probably will always be, at war; but fortunately for the welfare of the country, the law has the upper hand.

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